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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.G., a Person Coming Under the
Juvenile Court Law.

B207960
(Los Angeles County
Super. Ct. No. NJ22755)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

John C. Lawson II, Commissioner. Modified in part; affirmed in part.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that appellant J.G. committed first degree burglary in violation of Penal Code section 459. On December 7, 2007, the court found that appellant was a person described by Welfare and Institutions Code¹ section 602, adjudged appellant to be a ward of the court, and placed him on home probation, with a maximum confinement time of six years. Appellant appealed from the trial court's orders. We affirmed those orders in case No. B205562.

On April 30, 2008, the juvenile court held a restitution hearing and ordered appellant to pay the victims of the burglary \$1,517.32. Appellant appeals from that order, contending that there is insufficient evidence to support the amount of the restitution order. We order the award reduced by \$77.25 to \$1,440.07. We affirm the order in all other respects.

Facts

Appellant broke into the apartment rented by Cadence and Allison Arzuman and tried on various items of underwear belonging to the women. At some point, appellant turned down Cadence's bedcovers. He also took an i-Pod.

The Arzumans filed a property loss report totaling \$1,164.41. The report itemizes the losses as follows: \$229 to replace the i-Pod, \$32 to repair or replace one damaged window screen and \$31.61 for a second damaged window screen, \$42 to replace underwear from Victoria's Secret and Tilly's, \$28.50 for dry-cleaning a comforter, \$70 to replace satin tank tops, \$25 to replace a corset bra, \$17.50 to replace a toilet seat, \$447.80 for Allison's lost wages and \$241 for Cadence's lost wages. Various receipts are attached to the report.

The trial court ordered appellant to pay restitution in the amount of \$1,517.32. It is reasonable to understand this amount as representing the sum of the property loss report (\$1,164.41) plus the Costco receipt for replacement underwear and pillows

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(\$104.49) plus one day's pay for Cadence and Allison while attending the restitution hearing (\$169.92 + \$96.40), minus the amount claimed in the property loss report for a new toilet seat (\$17.50). These figures total \$1,517.72.²

Discussion

Appellant contends that there is insufficient evidence to support the juvenile court's restitution order. Appellant specifically contends that some of the items which the victims replaced were not damaged, and that they should not have been compensated for that replacement. He also contends that there is no evidence that either victim lost wages or employment benefits as a result of the incident. We do not agree.

Section 730.6 parallels the adult restitution statute and governs restitution in juvenile proceedings. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1131-1132.) Under that section, a victim who incurs any economic loss as a result of the conduct of a minor shall receive restitution directly from the minor in accordance with subdivision (h).

Section 730.6, subdivision (h) provides that a restitution order "to the extent possible, shall identify each victim, . . . and the amount of each victim's loss to which it pertains, and shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following: [¶] (1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible . . . [¶] . . . [¶] . . . (4) Wages or profits lost by the victim . . . due to time spent as a witness or in assisting the police or prosecution."

² Allison testified during the restitution hearing that she made an error of 40 cents in her calculations for the report. It is reasonable to infer that the trial court corrected the total by this amount, thus accounting for the 40 cent difference in the two totals.

A restitution order is reviewed under an abuse of discretion standard. (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) A trial court is found to be within its discretion as long as there is a factual and rational basis for the restitution amount ordered. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1125.) A victim's statements at a restitution hearing about the value of her property is prima facie evidence of the property's value. (*People v. Foster* (1993) 14 Cal.App.4th 939, 946-948.)

a. Replacements

Allison sought \$36.78 plus \$3.03 in tax for two pillows that she purchased at Costco. Appellant contends that there is no evidence that any pillows were damaged during the burglary and needed to be replaced. We agree.

Allison testified that the pillows were on the floor when she returned home and the sisters thought that appellant might have touched them. There is no testimony that the pillows were dirty, torn or otherwise damaged. There is also no evidence to suggest that appellant did anything more than move the pillows from the bed to the floor. Accordingly, the trial court erred in awarding restitution for the pillows. The cost of the pillows should be deducted from the restitution total.

Appellant also disputes various aspects of the restitution award for replacement undergarments. We agree that some of these replacement items were not necessary.

Cadence sought \$42 to replace new underwear from Victoria's Secret and Tilly's, which were still in bags with their price tags on at the time of the burglary. Appellant removed these items from their bags, pulled off the price tags and left them crumpled up on the floor. The sisters believed that appellant had tried them on. Appellant does not oppose restitution for the replacement costs of those items, but he does contend that the amount awarded is too high.

Appellant contends that the Arzumans requested \$52.99 for articles purchased from Tilly's but that they are not entitled to this amount because some things in the purchase were not underwear. The Arzumans did not claim the full amount of the Tilly's

receipt. They claimed a total of \$42 for underwear from Victoria's Secret and Tilly's. The Tilly's receipt was provided to show the cost of the underwear from that store.

Both sisters also sought the replacement costs of all the underwear in their dressers. Appellant also contends that there is no evidence that the underwear from the drawers was damaged and needed to be replaced. We agree in part.

Allison testified that she and her sister bought underwear at Costco to replace all of the underwear in their undergarment drawers because appellant had gone through those drawers. The women did not feel comfortable wearing those items because appellant had touched them. There is nothing in the record to indicate that appellant ever took those garments out of the drawers, let alone that he tried them on. It is not reasonable to characterize those garments as damaged. Allison did testify that about eight pairs of her underwear were moved into Cadence's room. It is reasonable to believe that appellant might have tried these garments on and so to view them as damaged.³ Two four-packs of Costco underwear cost \$27.98. The remaining \$34.59 plus \$2.85 in tax for underwear spent at Costco should be deducted from the restitution total.⁴

b. Lost wages

Appellant contends that there is no evidence that the victims lost any wages or benefits as a result of this crime. We do not agree.

Allison testified that she and her sister missed days from work to attend court. She testified that the sisters spent 2.5 days coming to court, not including the restitution hearing. Allison's testimony is evidence. She also presented evidence that she and Cadence were paid by the hours (or days) that they worked. Thus, it is reasonable to

³ Appellant does not contest the replacement of the underwear which was found outside the drawer.

⁴ That total consists of one four-pack of underwear costing \$13.99 and two three-packs of underwear costing \$10.29 each.

infer that the sisters either lost wages or used vacation days when they missed work to come to court.⁵

Appellant points out that not all court days were full days. Perhaps so, but that does not render the sisters' time off unreasonable. Travel, meeting and waiting times were no doubt involved.

Appellant further contends that one of the days described as a court day did not actually involve going to court. He states that Allison came to court simply to drop off a letter with the district attorney. In the property loss report, Allison states that she came to court to speak with the district attorney and to discuss a personal letter with new evidence. At the restitution hearing, she testified that she turned in documentation that day. These activities constitute "time spent as a witness or in assisting the police or prosecution." (§ 730.6, subd. (h)(4).) The sisters were properly awarded restitution for this day.

Appellant also takes issue with the juvenile court's decision to award each sister a full day's lost wages for attending the restitution hearing. He contends that the sisters were only entitled to a half-day's worth of wages. Again, the court was entitled to consider that travel, meeting and waiting times were involved.

Appellant points out that Allison listed a day that she took off to clean the house in an attachment to her property loss report and that such a day would not be reimbursable. Allison expressly testified that although she listed that day in the attachment, it was not included in the property loss report total. Handwritten calculations show that the wages sought in the property loss report were for 2.5 days.

⁵ Since the sisters were paid by the time they worked, appellant's reliance on *People v. Friscia* (1993) 18 Cal.App.4th 834 is misplaced. In that case, the victims were paid monthly, and there is nothing to indicate that they lost wages as a result of time away from work. Rather, the victims sought additional compensation for the time they worked on uncovering the defendant's embezzlement.

Disposition

The restitution award is ordered reduced by \$77.25 to \$1,440.07. The clerk of the court is directed to prepare an amended minute order reflecting this change and to deliver it to the appropriate parties. The court's order is affirmed in all other respects.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.